

APPEAL NO. 010305

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 4, 2001. On the sole issue presented, the identity of the appellant's (claimant) employer on _____, her date of injury, the hearing officer held that it was (contractor), which operated as an independent contractor with respect to the (client company), on whose premises the claimant was injured.

The claimant has appealed, arguing that actual control over the details of her work was exerted by the client company and that the respondent (carrier) (who insures the client company) is liable for benefits. The carrier recites evidence in favor of the decision.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in holding that the claimant was employed by the contractor on her date of injury. Evidence was developed that the contractor was not insured for workers' compensation when the claimant, a janitorial/cleaning employee hired by the contractor, slipped and fell in a women's restroom. The claimant said she had been hired in 1987 and first sent to clean for the client company at that time. A copy of a contract, as well as the testimony of the owner of the contractor, Mr. R, made clear that the contractor furnished the people and cleaning supplies to clean the headquarters office for the client company. Mr. R said that the client company provided towels, tissues, and a special cleaning substance to polish one of the client company's wood floors, but that all else was provided by the contractor. The contract between the companies stated that the contractor charged a combination of hourly charges and "per square foot" charges for janitorial and rug cleaning services.

The claimant said that she received instruction from the building manager, who was in charge of the cleaning contracts for the client company. However, upon further questioning, it appeared that such direction usually took the form of listening to phone messages he left as to where the claimant's services were needed on that day. The claimant said that most people who cleaned for the client company worked at night, but she was one of two provided day shift employees. She testified about the cleaning chores she routinely performed. The night supervisor was an employee of the contractor. The claimant had always received checks from the contractor, never the client company. The general supervision a general contractor exercises over a subcontractor to see that work is done in accordance with a contract does not constitute evidence of an employer-employee relationship between the general contractor and the subcontractor. U.S. Fidelity & Guaranty Company v. Goodson, 568 S.W.2d 443 (Tex. Civ. App.-Texarkana 1978, writ ref'd n.r.e.). The written contract here is not ambiguous as to the agreement that the contractor will provide cleaning and housekeeping services and the personnel and most supplies to do it. While the claimant may have received some

direction from the building manager for the client company, there was no indication that this amounted to supervision and control of the details of the claimant's work, as opposed to identification of a location where those services might be required.

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.- San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge